

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
-against-	:	17-CR-438 (VEC)
	:	
ESFRAIN SILVA,	:	<u>ORDER</u>
	:	
Defendant.	:	
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VALERIE CAPRONI, United States District Judge:

WHEREAS on November 5, 2020, Mr. Silva moved for compassionate release pursuant to 18 U.S.C. § 3582(c) (Dkt. 584);

WHEREAS on January 15, 2021, the Government filed an opposition, acknowledging that Mr. Silva had exhausted his administrative remedies, but opposing Mr. Silva's motion on the merits (Dkt. 596);

WHEREAS Mr. Silva did not file a reply by the February 15, 2021 deadline;

WHEREAS, a court may, according to the plain language of the statute, reduce Mr. Silva's sentence under the rubric of compassionate release if, "after considering the factors set forth in § 3553(a)," it finds that "extraordinary and compelling reasons warrant such a reduction," 18 U.S.C. § 3582(c)(1)(A)(i);

IT IS HEREBY ORDERED THAT: Mr. Silva's motion for compassionate release is DENIED. Mr. Silva fails to demonstrate "extraordinary and compelling reasons" warranting a sentence reduction. Although Mr. Silva has asthma, his BOP medical records describe his asthma as "Rare Intermittent Asthma that is well controlled." Gov. Opp., Dkt. 596, Ex. A at 21, 23. The Centers for Disease Control and Prevention ("CDC") have noted that individuals "with chronic lung disease or *moderate to severe* asthma" are at a higher risk for severe illness if they

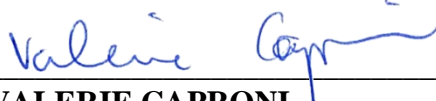
contract COVID-19, but have not indicated that mild asthma poses the same risks. *See People Who Are at Higher Risk for Severe Illness*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (emphasis added). Moreover, Mr. Silva does not currently have COVID-19 and is an otherwise healthy 28 year-old.<sup>1</sup>

Even assuming Mr. Silva had demonstrated “extraordinary and compelling reasons” warranting a sentence reduction, his release at this point, after serving only half of the forty-eight month sentence imposed by this Court, would be an inadequate punishment for his crime, considering the applicable factors set forth in 18 U.S.C. § 3553(a). Moreover, Mr. Silva’s conduct in prison is particularly concerning to the Court; Mr. Silva’s BOP disciplinary records indicate that he has been sanctioned on at least eleven separate occasions. Gov. Opp., Ex. B at 1-5. Specifically, Mr. Silva was sanctioned twice in 2020 alone for possessing drugs and alcohol and for assaulting an inmate. *Id* at 1. Such recent and repeated misconduct strongly suggests that Mr. Silva still poses a danger to the community and is not yet prepared to conform his behavior to the rules.

For the foregoing reasons, Defendant’s motion for compassionate release is denied. A copy of this order will be mailed by Chambers.

**SO ORDERED.**

**Date: March 17, 2021**  
**New York, NY**

  
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**VALERIE CAPRONI**  
**United States District Judge**

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<sup>1</sup> The Court is hopeful that all Bureau of Prison inmates will receive the COVID-19 vaccine by the summer of 2021. The Court encourages Mr. Silva to take advantage of the opportunity to be vaccinated as soon as the vaccine is made available to him.